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EXAMINER

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| ART UNIT | PAPER NUMBER |
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3626

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/008,027 | Applicant(s) MCEACHERN, J. EDWARD | |
| | Examiner Mike Tomaszewski | Art Unit 3626 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice To Applicant

1. This communication is in response to the application filed on 05 November 2001.

Claims 1-33 are pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-11 and 14-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraftson et al. (6,151,581; hereinafter Kraftson), in view of Joao (6,283,761; hereinafter Joao), and in view of Siegrist, Jr. et al. (5,652,842; hereinafter Siegrist).

(A) As per claim 1, Kraftson discloses a system for collecting, processing, and presenting survey information comprising:

- (1) a survey communication system for connecting to a survey participant and obtaining survey data, said survey communication system capable of executing software scripts for implementing desired automated survey routines (Kraftson: abstract; col. 21, lines 14-24; Fig. 1-23);
- (2) a customer viewpoint module for providing software scripts to said survey communication system for surveying survey participants who are customers and further for receiving said survey data from said survey communication system, said survey data obtained from the patients including patient viewpoint data (Kraftson: abstract; col. 21, lines 14-24; Fig. 1-23);
- (3) a personal clinical data analysis module for generating analyzed data generated by analyzing said participant survey data, wherein said personal clinical data analysis module generates reports on said analyzed data for use by the survey consumer (Kraftson: abstract; col. 2, line 51-col. 3, line 7; Fig. 1-23);
- (4) a viewpoint module for providing software scripts to said survey communication system for surveying survey participants and further for receiving said survey data from said survey communication system, said

survey data obtained from the participants including viewpoint data

(Kraftson: abstract; col. 21, lines 14-24; Fig. 1-23); and

- (5) a viewpoint module for providing software scripts to said survey communication system for surveying survey participants who are and further for receiving said survey data from said survey communication system, said survey data obtained from the participants (Kraftson: abstract; col. 21, lines 14-24; Fig. 1-23).

Kraftson, however, fails to expressly disclose a system for collecting, processing, and presenting survey information comprising:

- (6) an *automated* survey communication system [Emphasis added];
- (7) an *office team* viewpoint module viewpoint module for providing software scripts to said survey communication system for surveying survey participants *who are employees* and further for receiving said survey data from said survey communication system, said survey data *obtained from the employees including employee viewpoint data* [Emphasis added];
- (8) an *office fiscal performance* viewpoint module for providing software scripts to said survey communication system for surveying survey participants who are *managers* and further for receiving said survey data from said survey communication system, said survey data obtained from the *managers including fiscal performance data* [Emphasis added]; and

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- (9) an office data presentation module for generating assessed survey information for presenting to end users in a formatted manner, said assessed survey information including information for providing quality assessments of an organization.

Nevertheless, these features are old and well known in the art, as evidenced by Joao and Siegrist. In particular, Joao and Siegrist disclose a system for collecting, processing, and presenting survey information comprising:

- (6) an *automated* survey communication system [Emphasis added] (Joao: abstract; col. 2, lines 54-63; col. 4, lines 26-33; col. 7, lines 33-43; col. 19, lines 54-64; Fig. 1-15B);
- (7) an *office team* viewpoint module viewpoint module for providing software scripts to said survey communication system for surveying survey participants *who are employees* and further for receiving said survey data from said survey communication system, said survey data *obtained from the employees including employee viewpoint data* [Emphasis added] (Joao: abstract; col. 2, lines 54-63; col. 4, lines 26-33; col. 7, lines 33-43; col. 19, lines 54-64; col. 41, line 55-col. 43, line 29; Fig. 1-15B);
- (8) an *office fiscal performance* viewpoint module for providing software scripts to said survey communication system for surveying survey participants who are *managers* and further for receiving said survey data

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- from said survey communication system, said survey data obtained from the *managers including fiscal performance data* [Emphasis added] (Siegrist: abstract; col. 1, lines 5-col. 2, line 61; Fig. 1-13f); and
- (9) an office data presentation module for generating assessed survey information for presenting to end users in a formatted manner, said assessed survey information including information for providing quality assessments of an organization (Siegrist: abstract; col. 1, lines 5-col. 2, line 61; Fig. 1-13f).

One of ordinary skill in the art would have found it obvious at the time of the invention to combine the teachings of Joao with the combined teachings of Kraftson and Siegrist with the motivation of improving the quality of products or services rendered (Joao: col. 2, lines 46-54).

One of ordinary skill in the art would have found it obvious at the time of the invention to combine the teachings of Siegrist with the combined teachings of Kraftson and Joao with the motivation of improving the quality of products or services rendered (Kraftson: abstract).

Examiner also notes that nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability. See *In re Nagi*, 367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004) (combining printed instructions and an old product into a kit will not render the claimed invention

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nonobvious even if the instructions detail a new use for the product); and *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability). Common situations involving nonfunctional descriptive material are as follows: a computer that differs from the prior art solely with respect to nonfunctional descriptive material that cannot alter how the machine functions (i.e., the descriptive material does not reconfigure the computer); a process that differs from the prior art only with respect to nonfunctional descriptive material that cannot alter how the process steps are to be performed to achieve the utility of the invention; and a computer-readable storage medium that differs from the prior art solely with respect to nonfunctional descriptive material, such as music or a literary work, encoded on the medium. See MPEP § 2106.

As such, nonfunctional descriptive material found in claims 1-33 (e.g., practice data, historical performance normative data, pathophysiologic normative data, various customer viewpoint data, various employee viewpoint data, various team function data, various fiscal performance data, etc.) will not distinguish the claimed invention from the prior art (e.g., Kraftson, Joao, Siegrist, etc.) in terms of patentability.

(B) As per claim 2, Kraftson discloses the system according to claim 1 wherein said generating assessed survey information for presenting to end users in a formatted manner utilizes a compass viewpoint information presentation paradigm (Kraftson: abstract; col. 2, line 51-col. 3, line 7; col. 17, lines 11-27; Fig. 1-23).

(C) As per claim 3, Kraftson discloses the system according to claim 1 applied to a medical care provider, wherein said customer is a patient, said system further comprising:

- (1) a comparative practice data repository for storing and retrieving said survey data and for storing and retrieving said analyzed data and for storing and retrieving said assessed survey information (Kraftson: abstract; col. 4, line 59-col. 5, lines 62; col. 10, line 31; Fig. 1-23);
- (2) a historical data repository on clinic performance for storing fiscal historical performance normative data for use by said office data presentation module for generating and displaying historical fiscal performance comparisons for predicting fiscal success (Kraftson: abstract; col. 4, line 59-col. 5, lines 62; col. 10, line 31; Fig. 1-23); and
- (3) a clinical and pathophysiologic normative data repository for storing clinical and pathophysiologic normative data obtained from various sources, said clinical and pathophysiologic normative data relating patient parameters including age, gender, and medical conditions (Kraftson: abstract; col. 2, lines 51-col. 3, line 7; col. 4, line 58-col. 5, line 63; Fig. 1-23).

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Examiner also notes that nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, as discussed in section 3. (A), *supra*.

(D) As per claim 4, Kraftson discloses the system according to claim 3 wherein said customer viewpoint data includes:

- (1) customer satisfaction data;
- (2) office process viewpoint data;
- (3) provider care and concern data; and
- (4) verbatim viewpoint comments (Kraftson: abstract; col. 2, lines 51-col. 3, line 7; col. 4, line 58-col. 5, line 63; Fig. 1-23).

As per the further recitations expanding, *inter alia*, “employee viewpoint data,” “job performance data,” “team function data,” “employee function data,” and “fiscal performance data,” it is respectfully submitted that the technique of using various data, culled from the immense variety of ubiquitous sources, for analysis purposes is well known and obvious. One of ordinary skill in the art would have found it obvious at the time of the invention to incorporate these data with the motivation of improving the quality of products or services rendered (Kraftson: abstract).

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Examiner also notes that nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, as discussed in section 3. (A), *supra*.

(E) As per claim 5, Kraftson discloses the system according to claim 4 wherein said analyzed data includes:

- (1) a comparative patient level data for storing in said clinical and pathophysiological normative data repository, said comparative patient level data (Kraftson: abstract; col. 2, lines 51-col. 3, line 7; col. 4, line 58-col. 5, line 63; Fig. 1-23) including:
 - (a) patient age data;
 - (b) patient gender data;
 - (c) patient functional health status data;
 - (d) patient health screening data;
 - (e) patient family medical history data;
 - (f) patient medication data;
 - (g) patient pathophysiology data;
 - (h) patient health habits data;
 - (i) patient counseling data;
 - (j) patient satisfaction data;

- (k) patient health care access data; and
 - (l) patient payment capability data (Kraftson: abstract; col. 2, lines 51-col. 3, line 7; col. 4, line 58-col. 5, line 63; Fig. 1-23);
- (2) comparative data for stored in said comparative practice data repository (Kraftson: abstract; col. 2, lines 51-col. 3, line 7; col. 4, line 58-col. 5, line 63; Fig. 1-23); and
- (3) analyzed data stored in said comparative practice data repository (Kraftson: abstract; col. 2, lines 51-col. 3, line 7; col. 4, line 58-col. 5, line 63; Fig. 1-23).

Examiner also notes that nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, as discussed in section 3. (A), *supra*.

(F) As per claim 6, Kraftson discloses the system according to claim 5 wherein said assessed survey information includes:

- (1) patient viewpoint results including:
 - (a) office process viewpoints;
 - (b) provider care and concern viewpoints;

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- (c) overall visit viewpoints; and
- (d) verbatim comments on processes (Kraftson: abstract; col. 2, lines 51-col. 3, line 7; col. 4, line 58-col. 5, line 63; Fig. 1-23).

As per the further recitations regarding, *inter alia*, “functional health status results” and “fiscal performance viewpoint results,” it is respectfully submitted that the technique of using various data, culled from the immense variety of ubiquitous sources, for analysis purposes is well known and obvious. One of ordinary skill in the art would have found it obvious at the time of the invention to incorporate these data with the motivation of improving the quality of products or services rendered (Kraftson: abstract).

Examiner also notes that nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, as discussed in section 3. (A), *supra*.

(G) Claim 7 substantially repeats the same limitations of claim 5 and is therefore, rejected for the same reasons given for claim 5 and incorporated herein.

(H) Claims 8 and 9 substantially repeat the same limitations of claims 6 and are therefore rejected for the same reasons given for claim 6 and incorporated herein.

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(I) As per claim 10, Kraftson fails to expressly disclose the system according to claim 1 applied to a medical care provider wherein said customer is a patient and further wherein said analyzed data includes:

- (1) patient family and social histories;
- (2) reviews of health habits;
- (3) health concerns;
- (4) medication reviews;
- (5) health screening information; and
- (6) recommendations based on nationally accepted guidelines, age, gender, and condition specific care.

Nevertheless, these features are old and well known in the art, as evidenced by Joao. In particular, Joao discloses the system according to claim 1 applied to a medical care provider wherein said customer is a patient and further wherein said analyzed data includes:

- (1) patient family and social histories;
- (2) reviews of health habits;
- (3) health concerns;
- (4) medication reviews;
- (5) health screening information; and

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- (6) recommendations based on nationally accepted guidelines, age, gender, and condition specific care (Joao: abstract; col. 41, line 55-col. 43, line 29; col. 16, line 33-col. 20, line 30; Fig. 1-15B).

One of ordinary skill in the art would have found it obvious at the time of the invention to combine the teachings of Joao with the combined teachings of Kraftson and Siegrist with the motivation of improving the quality of products or services rendered (Joao: col. 2, lines 46-54).

Examiner also notes that nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, as discussed in section 3. (A), *supra*.

(J) Claim 11 substantially repeats the same limitations as claim 2 and is therefore, rejected for the same reasons given for claim 2 and incorporated herein.

(K) Claim 30 differs from method claims 1-11 by reciting hardware elements, namely, "a means for connecting to a survey participant over an external communication network," "means for conducting a plurality of automated surveys," "means for generating analyzed data," "means for generating reports," and "a means for generating assessed survey information." As per these elements, it is respectfully submitted that because the teachings of Kraftson, Joao and Siegrist disclose the method steps in method claims 1-11, they also, in order to perform the method steps, disclose the

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aforementioned hardware elements as well. As such, claim 30 substantially repeats the same limitations of method claims 1-11 and is therefore, rejected for the same reasons given above for those claims and incorporated herein.

(L) Claim 31 substantially repeats the same limitations as claim 2 and is therefore, rejected for the same reasons given for claim 2 and incorporated herein.

(M) Claim 32 differs from method claims 1-11 by reciting hardware elements, namely, "a means for connecting to a survey participant over an external communication network," "means for conducting a plurality of automated surveys," "means for generating analyzed data," "means for generating reports," "a means for generating assessed survey information," and "means for formatting said assessed data." As per these elements, it is respectfully submitted that because the teachings of Kraftson, Joao and Siegrist disclose the method steps in method claims 1-11, they also, in order to perform the method steps, disclose the aforementioned hardware elements as well. As such, claim 32 substantially repeats the same limitations of method claims 1-11 and is therefore, rejected for the same reasons given above for those claims and incorporated herein.

(N) Claim 33 substantially repeats the same limitations as claim 2 and is therefore, rejected for the same reasons given for claim 2 and incorporated herein.

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4. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraftson, Joao and Siegrist as applied to claims 1-11 and 14-33 above, and further in view of Plantec et al. (6,826,540; hereinafter Plantec).

(A) As per claim 12, Kraftson fails to expressly disclose a system for collecting, processing, and presenting survey information for a medical care provider comprising: an interactive voice recognition module.

Nevertheless, this feature is old and well known in the art, as evidenced by Plantec. In particular, Plantec discloses a system for collecting, processing, and presenting survey information for a medical care provider comprising: an interactive voice recognition module (Plantec: abstract; col. 3, line 65-col. 4, line 1; Fig. 2).

One of ordinary skill in the art would have found it obvious at the time of the invention to combine the teachings of Plantec with the combined teachings of Kraftson, Joao and Siegrist with the motivation of automating the collection of survey data (Plantec: abstract).

The remainder of claim 12 substantially repeats the same limitations as claims 1-11 and is therefore, rejected for the same reasons given for those claims and incorporated herein.

(B) Claim 13 substantially repeats the same limitations as claim 2 and is therefore, rejected for the same reasons given for claim 2 and incorporated herein.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The cited but not applied art teaches a survey communication across a network (6,618,746); a method for evaluation of health care quality (5,544,044); a method and system for measuring management effectiveness (5,365,425); a system and method for assessing physician performance using robust multivariate techniques of statistical analysis (5,924,073); a system and method for generating a knowledge worker productivity assessment (5,909,669); a customer satisfaction terminal (4,345,315); a method and apparatus for objectively monitoring and assessing the performance of health-care providers (5,706,441); a method, apparatus, and data structure for capturing and representing diagnostic, treatment, costs, and outcomes information in a form suitable for effective analysis and health care guidance (6,381,576); and an apparatus for processing psychological data and method of use thereof (5,961,332).

The cited but not applied prior art also includes non-patent literature articles by Fisher, Charles R. ("Trends in Total Hospital Financial Performance Under the Prospective Payment System" Spring 1992. Health Care Financing Review. Vol. 13, Iss. 3. pg. 1.); anonymous ("Patient Satisfaction Survey" Oct 2000. Trustee. Vol. 53, Iss. 9. pg. 24.); Czarnecki, Mark T. ("Benchmarking Can Add Up For Healthcare Accounting" Sep 1994. Healthcare Financial Management. Vol. 48, Iss. 9. pg. 62.); Giunipero, Larry

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C. and Stepina, Lee. ("Job Status and Satisfaction of Hospital Materiel Managers" Feb 1987. Hospital Materiel Management Quarterly" Vol. 8, Iss. 3. pg. 66.); Eubanks, Paula. ("CEOs Cite Job Satisfaction; Experts See Risks" Jun 20, 1991. Hospitals. Vol. 65, Iss. 12. pg. 62.); Sloan, Stanley ("Health Care CEO Survey" Dec 1992. Georgia Trend. Vol. 8, Iss. 4. pg. 45.); Mowll, Charles A. ("Hospitals Rate Fiscal Intermediary Performance" Mar 1989. Healthcare Financial Management. Vol. 43, Iss. 3. pg. 110.); and Gregory, Nancy and Kaldenberg, Dennis O. ("Satisfaction With the Billing Process: Using a Patient Survey to Identify Opportunities for Process Improvement" Summer 2000. Hospital Topics. Vol. 78, Iss. 3. pg. 20.).

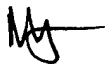
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Tomaszewski whose telephone number is (571)272-8117. The examiner can normally be reached on M-F 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (571)272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MT



C. LUKE GILIGAN
PATENT EXAMINER